



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,112	09/27/2004	Wassilios Grammenos	53376	1295
26474	7590	12/15/2006		
NOVAK DRUCE DELUCA & QUIGG, LLP 1300 EYE STREET NW SUITE 400 EAST TOWER WASHINGTON, DC 20005				
			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER
DATE MAILED: 12/15/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

T#

Office Action Summary	Application No.	Applicant(s)	
	10/509,112	GRAMMENOS ET AL.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 8/2/06;9/29/06;11/29/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 9 and 17 is/are allowed.
- 6) ☐ Claim(s) 1-5, 10-14 and 18 is/are rejected.
- 7) ☐ Claim(s) 6-8, 15, 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

I. Rejection of claims 7-10 under 35 USC 112, 2nd paragraph will not be maintained in light of amendment filed 8/2/06, 9/29/06 and 11/29/06. Applicant has correct antecedent basis problems associated with these claims.

II. Rejection of claim 9 under 35 USC 1029(e) as being anticipated by Grammenos will not be maintained in light of amendment filed 8/2/06, 9/29/06 and 11/29/06.

Applicant has deleted "haloalkoxy" as a possibility for the R1 substituent.

III. New Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-5, 10-14, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz et al (WO 96/17825; 6/13/96). Seitz suggests a compound of formula I where Ar₂ is a phenyl that is substituted with 2 alkoxy groups, A₁, A₂ and A₃ = H, m = 2, E is =CHR₁ where position 1 on the moiety bears a heteroaryl (Ar₁)-G-Z and the R₁ on position 2 of the moiety bears alkyl (Me, Et, Pr), G = bond, and Z = halogen, alkyl (Me, Et, Pr) or alkoxy (O-Me, O-Et, O-Pr). This compound taught by Seitz is equivalent to compound of instant formula I in the instant claims. Seitz teaches that his compounds can be combined with carriers to produce a composition. Seitz also teaches a method of applying the composition to materials to control fungi growth. Seitz does not exemplify a

Art Unit: 1616

specific compound of instant formula I and does not exemplify a method of applying the compound to material to control fungal growth. However, at the time of Seitz's invention one having ordinary skill in the art would have been expected to make the instant compound of formula I and apply it to materials to control fungal growth. One would have been motivated to do this since Seitz suggests the instant compounds and their application to materials to control fungal growth.

Claim Objection / Allowable Subject Matter

Claims 6-8,15,16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 9 and 17 are allowable. The prior art does not teach or suggest the instant method of making compound of instant formula I using compound of formula III or IV or compound in claim 8. The prior art does not teach or suggest the compound of formula II'.

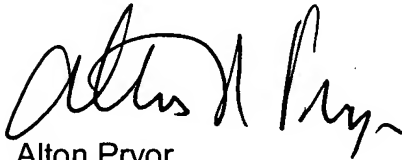
Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written over the printed name.

Alton Pryor
Primary Examiner
AU 1616